



Title 6. Property and Land – Chapter 611

LANDLORD-TENANT

Rule # 2 – Income Based Rental Program Eligibility, Selection and Other Requirements

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2.1. Purpose and Delegation

2.1-1. *Purpose.* The purpose of this rule is to provide additional eligibility requirements, selection procedures and general requirements that govern the Comprehensive Housing Division's income-based rental programs. The mission of the income-based housing program is to develop, maintain, and operate affordable housing in safe, sanitary and healthy environments within the reservation.

2.1-2. *Authority.* The Landlord-Tenant law delegated the Comprehensive Housing Division and Land Commission joint rulemaking authority pursuant to the Administrative Rulemaking law. However that delegation excluded the Land Commission from having joint authority where the rules relate solely to premises administered pursuant to federal funding. Accordingly, the Comprehensive Housing Division has sole rulemaking authority for these rules.

2.2. Adoption, Amendment and Repeal

2.2-1. This rule was adopted by the Comprehensive Housing Division in accordance with the procedures of the Administrative Rulemaking law.

2.2-2. This rule may be amended or repealed by the approval of the Comprehensive Housing Division pursuant to the procedures set out in the Administrative Rulemaking law.

2.2-3. Should a provision of this rule or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this rule which are considered to have legal force without the invalid portions.

2.2-4. In the event of a conflict between a provision of this rule and a provision of another rule, internal policy, procedure or other regulation, the provisions of this rule control.

2.2-5. This rule supersedes all prior rules, regulations, internal policies or other requirements relating to the Landlord-Tenant law.

2.3. Definitions

2.3-1. This section governs the definitions of words and phrases used within this rule. All words not defined herein are to be used in their ordinary and everyday sense.

- (a) “Comprehensive Housing Division” means the entity responsible for housing matters specifically related to rental agreements as defined by Oneida Business Committee Resolution.¹
- (b) “Household” means all persons residing within the income-based rental unit.
- (c) “HUD” means the United States Department of Housing and Urban Development.
- (b) “Landlord” means the Nation in its capacity to rent real property subject to a rental agreement.
- (c) “Nation” means the Oneida Nation.
- (d) “Premises” means the property covered by a rental agreement, including not only the real property and fixtures, but also any personal property furnished by the landlord pursuant to a rental agreement.
- (e) “Rental Agreement” means a written contract between a landlord and a tenant, whereby the tenant is granted the right to use or occupy the premises for a residential purpose for one (1) year or less.
- (f) “Tenant” means the person granted the right to use or occupy a premises pursuant to a rental agreement.
- (g) “Tribal member” means an enrolled member of the Nation.
- (h) “Security Deposit” means a payment made to the landlord by the tenant to ensure that rent will be paid and other responsibilities of the rental agreement performed.

2.4. Eligibility Requirements

2.4-1. *Tribal Member Status.* At least one (1) of the household members listed in the household composition is required to be a Tribal member. Comprehensive Housing Division staff shall verify enrollment status by either requiring a copy of the Tribal Identification Card or requesting verification from the Trust Enrollment Department.

2.4-2. *Maximum Income.* Pursuant to the Native American Housing Assistance and Self Determination Act (NAHASDA), in order to be eligible for an income-based rental agreement, the household must qualify as low income at the time of initial occupancy. In order to qualify as low-income, applicants’ household income may not exceed eighty percent (80%) of the regional gross annual income based on the data from Outagamie County.² For the purposes of this section, CHD shall calculate income in accordance with 24 CFR § 5.609 and shall provide the effective language to the Legislative Reference Office to be published as Appendix 01 to this Rule so that applicable income calculations are publicly available on the Oneida Register.

(a)

2.4-3. *Minimum Income.* Applicants shall meet a minimum household income of \$7,800 per year.

2.4-4. *Outstanding Debts.* Applicants for a rental agreement may not have a past due balance greater than two hundred dollars (\$200) owed to any utility provider and may not have any prior debt owed to the Comprehensive Housing Division.

2.4-5. *Prior Comprehensive Housing Division Eviction.* Applicants that have had a rental agreement with the Comprehensive Housing Division subject to an eviction and termination within

¹ See BC Resolution 10-12-16-D providing that for purposes of the Landlord-Tenant law, the Comprehensive Housing Division means the Division of Land Management for general rental agreements, the Oneida Housing Authority for income-based rental agreements and Elder Services for rental agreements through the Elder Services program.

² Pursuant to resolution BC-01-25-12-A, Outagamie County is designated as the data source for collecting regional gross income for determining low-income housing eligibility because the income in that area is generally higher than Brown County’s and results in more persons being eligible based on the income requirements.

two (2) years from the date of the application are not eligible to participate in the income-based rental program.

2.4-6. *Criminal Convictions.* Applicants with any of the following types of convictions are not eligible for participation in the income-based rental program, provided that the Pardon and Forgiveness law may provide an exception to the conditions contained in this section:

- (a) A drug conviction within three (3) years from the date of application;
- (b) A felony conviction within five (5) years from the date of application; and/or
- (c) A criminal conviction based upon an act of violence within two (2) years from the date of the application.

2.4-7. *Pardon and Forgiveness.* A grant of a pardon or forgiveness pursuant to the Nation's Pardon and Forgiveness law may result in an otherwise ineligible tenant becoming eligible.

2.5. Application Process and Wait List

2.5-1. *Applying.* Persons wishing to participate in the income-based housing program shall complete the Comprehensive Housing Division rental agreement application and any other accompanying forms required based on the income-based program eligibility requirements. The Comprehensive Housing Division staff may not consider any applications for selection and/or placement on the wait list until the application and all accompanying forms are complete. Upon receipt of a completed application, including all supplementary forms, Comprehensive Housing Division staff shall date and time stamp the application. If, regardless of a complete application submittal, additional information is required to determine eligibility, the Comprehensive Housing Division staff shall request such information and maintain the application submittal date provided that the applicant responds to the information requests in a reasonably timely fashion.

(a) *Household Composition Form.* The Comprehensive Housing Division staff shall require applicants to the income-based housing program to complete a Household Composition Form which provides the full name, age and date of birth of each person contemplated to reside in the income-based rental unit. In order to verify such information, the Comprehensive Housing Division staff shall require that applicants submit the following with the Household Composition Form:

- (1) Copies of social security cards for each person contemplated to reside in the income-based rental unit, provided that for newly born babies that have not yet been issued a social security card a birth certificate is sufficient;
- (2) A copy of a picture identification card for each adult contemplated to reside in the income-based rental unit;
- (3) If any adults in the home are enrolled in post-secondary education, verification of enrollment in the form of a financial aid award letter or other documentation directly from the school; and
- (4) If an adult in the household is the custodial parent/guardian of a minor, a copy of the court documents which awarded such placement.

(b) *Background Checks.* In order to ensure compliance with the eligibility requirements of the Landlord-Tenant law and these rules, Comprehensive Housing Division staff shall perform a background check on each adult in the household. Household adults are also subject to annual background checks upon annual rental agreement renewal pursuant to 2.8-5 and as may be determined to be necessary to maintain the safety of the community by the Comprehensive Housing Division staff.

2.5-2. *Notification of Eligibility, Placement on the Wait List.* When Comprehensive Housing

Division staff completes its review of an application and determines the applicant(s) eligible for the income-based rental program, the staff shall:

(a) Place the applicant(s) into one (1) of the following categories of renters based on the household size and needs as provided below:

(1) Single Adult/Adult Couple – A maximum of two (2) adults in the household, no children.

(2) Small Household – A maximum four (4) household members in the household.

(3) Large Household – A household of five (5) or more household members.

(4) Elder – A household with a maximum of two (2) adults and no children wherein at least one (1) adult is sixty-two (62) years old or older at the time of application.

(5) Minimum Handicap Accessibility Required – For each of the category types provided in subsections (1)-(4) above, there shall be an additional category for each requiring minimum handicap accessibility. This category shall be reserved for households with at least one (1) household member requiring permanent and minimal handicap accessibility (i.e. permanent use of a walker); this category includes all handicap needs that do not amount to full wheelchair accessibility.

(6) Maximum Handicap Accessibility Required – For each of the category types provided in subsections (1)-(4) above, there shall be an additional category for each in which at least one (1) household member requires full wheelchair handicap accessibility.

(b) Determine whether there is a wait list for the type of rental unit required based on the applicant's category of renter.

(1) If there is a wait list established, place the applicant on the wait list based on the date and time stamp of the application. At such time, Comprehensive Housing Division staff shall provide the applicant with notice of their placement on the wait list and the requirement to update their application should anything change prior to their designated use of rental unit becoming available. An applicant may request to be removed from the wait list at any time.

(2) If there is not a wait list established and there are available rental units available for the applicant's renter category, move to the tenant selection process provided in sections 2.6-3 and 2.6-4.

2.5-3. Notification of Ineligibility. If review of a complete submitted application and/or annual renewal reveals that an applicant is ineligible to participate in the income-based rental program based on the Landlord-Tenant law and/or rules, the Comprehensive Housing Division staff shall notify the applicant of the cause of the ineligibility and how the applicant may become eligible in the future. At such time, Comprehensive Housing Division staff shall also inform the applicant of other housing opportunities offered by the Nation for which the applicant may be eligible, if applicable.

2.5-4. Required Application Updates. Applicants on the wait list are required to update the application, at a minimum, annually, but also whenever information submitted on the application has changed. Applicants that fail to complete the application update within the allotted timeframe will be removed from the wait list and required to re-apply for future consideration absent proof of extenuating circumstances, for which Comprehensive Housing Division staff may provide a grace period of a maximum of ten (10) calendar days. For any updated application that reveals an applicant has become ineligible, Comprehensive Housing Division staff shall remove the applicant from the wait list and provide the applicant notice of the cause for ineligibility.

2.6. Tenant Selection

2.6-1. *Household Size and Available Units.* When a rental premise becomes available, the Comprehensive Housing Division staff shall preliminarily select a tenant based on the first applicant on the wait list for the said unit type based on the corresponding renter and unit categorization. In the event that a handicap accessible unit becomes available and there are no applicants on the wait list for the said type of handicap accessible unit, an applicant from the same renter category that does not require handicap accessibility may be selected for the said unit.

2.6-2. *Notice of Tenant Selection.* When an applicant is selected for a rental unit in accordance with this section, the Comprehensive Housing Division staff shall provide the applicant with notice of tenant selection. The notice, at a minimum, shall include the address of the rental premise, the required security deposit and monthly rent, and a requirement that the applicant respond within fifteen (15) calendar days to accept/reject the rental premise noting that the security deposit is due at the time of acceptance. Applicants that pay a security deposit and fail to complete the selection process to actually take occupancy forfeit the security deposit to the Comprehensive Housing Division as consideration for holding the unit. Comprehensive Housing Division shall return the security deposit to the applicant only in circumstances where the applicant is prevented from entering the rental agreement based on a loss of eligibility due to circumstances outside of the applicant's control (i.e. death of a Tribal member that made the household eligible for the income-based rental program).

(a) *Failure to Respond or Rejecting a Rental Premise.* If a rental premise is rejected for any reason or the applicant fails to respond to the notice, Comprehensive Housing Division staff shall remove the applicant from the wait list; in such circumstances the applicant may re-apply for the income-based rental program following a ninety (90) calendar day period of ineligibility.

(b) *Accepting a Rental Premise.* In order for an applicant's acceptance of a rental premise to be complete, the applicant shall submit along with the acceptance a payment for the full security deposit. Prior to accepting a security deposit payment, Comprehensive Housing Department staff shall verify that the applicant remains eligible for the income-based rental program and the rental unit type based on the household's categorization.

(1) *Standard Timeframe for Completing the Rental Agreement and Taking Occupancy.* Except as provided in subsection (2) below, applicants that have accepted a rental premise from the income-based rental program have five (5) calendar days from the date of acceptance and payment of the security deposit to:

(A) Reconfirm that they remain eligible for the income-based rental program and remain in the same category of renters;

(B) Pay the first month's rent; and

(C) Execute the rental agreement and all required supplemental forms, provided that the agreement may not be executed until (A) and (B) are complete.

(2) *Extended Timeframe for Completing the Rental Agreement for Applicants Providing Termination Notice to Another Landlord or Housing Program.* The Comprehensive Housing Division offers an extended timeframe for applicants required to provide thirty (30) or more calendar or business days' notice of termination of a rental agreement to a current landlord or housing program. In such circumstances, in order to qualify for the extended timeframe, the applicant shall

provide proof of the notice requirement in his/her current rental agreement by submitting the signed rental agreement to the Comprehensive Housing Division. Upon submittal of such proof, the applicant shall have thirty (30) calendar days from the date of acceptance and payment of the security deposit to:

- (A) Reconfirm that they remain eligible for the income-based rental program and remain in the same category of renters;
- (B) Pay the first month's rent; and
- (C) Execute the rental agreement and all required supplemental forms, provided that the agreement may not be executed until (A) and (B) are complete.

(3) *Taking Occupancy.* The Comprehensive Housing Division shall provide the tenant with keys to the rental premises upon execution of the rental agreement. As such time, the Comprehensive Housing Division staff shall provide the tenant with a check-in sheet and notice the tenant that he/she has seven (7) calendar days from the date the tenant takes occupancy to complete the check-in sheet and submit it to the Comprehensive Housing Division.

2.7. Rental Unit Catalog, Setting Rents and Security Deposits

2.7-1. *Rental Unit Catalog.* The Comprehensive Housing Division shall maintain a catalog of all rental units included in the income-based rental program. Said catalog shall categorize each rental unit based on designated use for the type of renter in accordance with the types of renters established in section 2.5-2(a).

2.7-2. *Setting Rents.* The Comprehensive Housing Division shall determine the required monthly rent for each household based on the household's income in accordance with the following:

(a) Rent may not exceed thirty percent (30%) of the household's adjusted gross income based on the income calculation requirements provided in section 2.4-3. Adjusted gross income means the annual household income remaining after the Comprehensive Housing Division staff applies the following deductions:

(1) *Dependent Deduction.* A deduction of \$480.00 from annual income for each household minor dependent or adult dependent where the adult dependent is either a full-time student or a person with disabilities.

(2) *Elder and/or Disabled Deduction.* A total deduction of \$400.00 from annual income for a household in which:

(A) A household member is sixty-two (62) years of age or older; and/or

(B) A household member is a person with a disability.

(3) *Medical and Attendant Expenses.* For a household qualifying under 2.7-2(a)(2), a deduction for medical expenses³ that are in excess of three percent (3%) of annual income and all expenses for live-in periodic attendant care assistance or apparatus to the extent necessary to enable a member of the family to be employed.

(4) *Child Care Expenses.* A deduction for reasonable child care expenses from annual income if the child care:

(A) Enables an adult household member to seek employment activity, be gainfully employed, or further his/her education; and

(B) Expenses are not reimbursed.

(5) *Child Support for a Household Minor.* A deduction for the full amount of child

³ Medical expenses are those identified in Title VII, Section IV of NAHASDA.

support paid by a household member for a household minor (i.e. when the parent paying child support lives in the same household as the child for which the parent is paying child support).

(6) *Earned Income of Minors*. A deduction in the amount of any earned income of any minor household member.

(7) *Travel Expenses for Employment or Education-Related Travel*. A maximum deduction of \$25.00 per week for travel expenses for employment or education related travel.

(b) Monthly rent may not exceed the fair market rents of the rental premise as determined by the data for Outagamie County.

(c) Households with any member that qualifies as a party listed below shall receive preferential rent wherein the Comprehensive Housing Division may not charge rent that exceeds twenty percent (20%) of the household's adjusted gross income based on the income calculation requirements provided in section 2.4-3.

(1) Elder Tribal Member – A Tribal member that is sixty-two (62) years old or older.

(2) Handicapped Tribal Member – A Tribal member that has a physical disability as documented by a medical provider/or proof of disability payments.

(3) Legally Incompetent Adult Tribal Member – A Tribal member that has been determined to be a legally incompetent adult based on the findings of a court of competent jurisdiction.

(4) Mentally Disabled Minor Tribal Member – A Tribal member under the age of eighteen (18) years old that has a mental disability as documented by a medical provider.

2.7-3. *Standard Security Deposit*. Comprehensive Housing Division staff shall set the standard security deposit required for each rental premise in the income-based rental program at \$350.00.

2.7-4. *Increased Security Deposit for Pets*. Tenants in the Comprehensive Housing Division's general rental program may have pets in accordance with the Domestic Animal Ordinance, provided that an increased security deposit is required.

(a) The standard security deposit does not apply to tenants with pets. Comprehensive Housing Division staff shall set the increased security deposit required for households with pets at a rate of \$350.00 plus an additional \$200.00 per pet.

(b) In the event that a tenant wishes to acquire a pet after the rental agreement has been signed, the tenant shall notify the Comprehensive Housing Division and shall pay the difference between the increased security deposit for pets and the standard security deposit. Tenants that fail to report a pet in the household may be assessed charges for an increased security deposit for pets if such pets are reported to the Comprehensive Housing Division and/or discovered at the time of an inspection.

2.8. Annual Inspection and Rental Agreement Renewal

2.8-1. *Scheduling Annual Inspections*. Comprehensive Housing Division staff shall schedule tenants' annual inspections for a date that is within ninety (90) calendar days of the expiration of the tenants' rental agreement.

2.8-2. *Inspection Checklist*. Comprehensive Housing Division staff completing the annual inspection shall use the checklist that is approved by the Comprehensive Housing Division director. Upon completion of the inspection, Comprehensive Housing Division staff shall request

that the tenant(s) sign the completed checklist.

2.8-3. *Damages.* Tenants are required to pay costs to repair any damages to the rental premises discovered during the annual inspection that do not amount to normal wear and tear. Payment for such costs must be received by the Comprehensive Housing Division prior to signing a rental agreement renewal, provided that the Comprehensive Housing Division may offer the tenant a payment agreement in for the damages, in which case the repayment agreement shall be signed prior to the rental agreement renewal.

2.8-4. *Immediate Notice of Change in Household Composition and/or Income.* Tenants shall immediately notify the Comprehensive Housing Division of any change in the tenant's household composition and/or income, regardless of the date scheduled for the annual renewal.

(a) *Change in Household Composition.* If a change in the household composition changes the tenant's category of renter based on section 2.5-2(a), the Comprehensive Housing Division staff shall work to transfer the household to a rental unit of corresponding category as soon as possible. If no such units are currently available, Comprehensive Housing Division staff shall move the tenant to the top of the waiting list. In order to be transferred or placed on a wait list, the tenant shall demonstrate that they remain eligible for the income-based rental program and are current with rent and utility payments. Tenants are only eligible for rental unit transfers within their current category of renter if, in the Comprehensive Housing Division's discretion, the transfer is needed to better accommodate the household composition.

(b) *Change in Household Income.* A change in household income may cause a change in the amount of monthly rent required, accordingly, any change in household income that is not reported within thirty (30) calendar days of the change shall result in a retroactive adjustment of the rent if the change results in an increase of rent payments. Retroactive rent shall be applied for each month there was a change in income that was not reported, excluding the initial thirty (30) calendar days provided to the tenant to report the change. The tenant is responsible for payment of all current and retroactive adjustments of rent and may be eligible for a repayment agreement, provided that in all circumstances and retroactive rental arrears shall be paid in full within one (1) year.

(c) *Rental Agreement Amendment.* Should a change in household size and/or income cause a change in the terms of the tenant's rental agreement, an amendment to the rental agreement is required to be executed.

2.8-5. *Rental Agreement Renewal.* Each rental agreement is limited to a twelve (12) month term. Tenants wishing to remain in the property are required to complete the annual rental agreement renewal by verifying that the household continues to meet all eligibility requirements contained in the Landlord-Tenant law and rules excluding the maximum income requirement provided in article 2.4-2. Once continued eligibility is verified, tenants that remain eligible are required to sign a rental agreement renewal.

(a) The Comprehensive Housing Division may, in its discretion, decline renewal of a rental agreement if it determines that the renewal is not in the best interest of the Nation. (b)

In the event a tenant fails to enter a rental agreement renewal and has not vacated the rental premises within thirty (30) calendar days of the expiration of the rental agreement, the Comprehensive Housing Division shall initiate the eviction process pursuant to the Eviction and Termination law.

2.8-6. *Ineligibility Due to Renewal or an Update of Household Information.* Comprehensive Housing Division staff shall provide tenants that become ineligible to participate in the income-

based rental program based on a renewal or update of household information with notice specifying the cause of the ineligibility and, if possible, how the household may reinstate eligibility.

(a) *Ineligibility Due to Renewal.* In circumstances where the tenant learns of ineligibility as part of the annual renewal, Comprehensive Housing Division staff shall include in the notice of ineligibility that renewal of the rental agreement is not available at such time and that the tenant is entitled to a minimum of a thirty (30) day notice to cure, by reinstating eligibility, or vacate.

(b) *Ineligibility Due to an Update of Household Information.* In circumstances where the tenant learns of ineligibility as part of an update of household information, Comprehensive Housing Division staff shall include in the notice of ineligibility the warning of potential termination in accordance with the rental agreement. In the event the tenant is unable to or fails to reinstate their eligibility in accordance with the timeline provided in the notice, the Comprehensive Housing Division shall permit the tenant to remain in the unit for the longer of the duration of the rental agreement or ninety (90) calendar days from the date of the notice of ineligibility.

(1) If the tenants' circumstances result in the tenant completing the term of the rental agreement, eligibility shall be reconsidered at the time of the annual renewal. If the tenant remains ineligible at the time of renewal, article 2.8-6(a) applies.

(2) If the tenants' circumstances result in the tenant receiving a thirty (30) calendar day notice to cure or ninety (90) calendar day notice to vacate, the tenant shall enter a limited term rental agreement to cover any time which exceeds the current rental agreement.

(c) *Limited Term Rental Agreements.* Limited term rental agreements are available in accordance with article 2.8-6(a) and (b) of these rules and section 611.9-4 of the Landlord-Tenant law. At a minimum, limited term rental agreement shall include:

(1) The date of the original notice of ineligibility;

(2) An explanation that the tenant has thirty (30) calendar days to reinstate eligibility;

(3) As applicable, an explanation that if eligibility is not timely reinstated, that the limited term rental agreement takes the place of the thirty (30) calendar day notice to cure or vacate required by the Eviction and Termination law; and

(4) An explanation that if eligibility is not timely reinstated, the rental unit will be reclaimed including the date the locks will be changed.

2.9. Rental Agreement Cancellation

2.9-1. *Two Week Notice Required.* Tenant wishing to cancel a rental agreement in the general rental program are requested to provide the Comprehensive Housing Division with a minimum of two (2) weeks of notice.

2.9-2. *Prorated Rent.* In the event of cancellation of a rental agreement or abandonment of the rental premises, the Comprehensive Housing Division staff shall prorate the required last month's rent payment based upon the greater of the following:

(a) The number of calendar days the unit was occupied in the last month; or

(b) Two (2) weeks from the date of cancellation or the date the Comprehensive Housing Division learns of abandonment.

End.

Original effective date: 04-13-2017
Amended: 08-14-2024

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(5) For the Shelter Plus Care Program, the "Recipient" as defined in 24 CFR 582.5;

(6) For the Supportive Housing Program, the "recipient" as defined in 24 CFR 583.5;

(7) For the Section 202 Supportive Housing Program for the Elderly, the "Owner" as defined in 24 CFR 891.205;

(8) For the Section 202 Direct Loans for Housing for the Elderly and Persons with Disabilities, the "Borrower" as defined in 24 CFR 891.505; and

(9) For the Section 811 Supportive Housing Program for Persons with Disabilities, the "owner" as defined in 24 CFR 891.305.

Tenant rent. The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). (This term is not used in the Section 8 voucher program.)

Total tenant payment. See § 5.628.

Utility allowance. If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

Utility reimbursement. The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (This definition is not used in the Section 8 voucher program, or for a public housing family that is paying a flat rent.)

Very low income family. A family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

Welfare assistance. Welfare or other payments to families or individuals, based on need, that are made under

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programs funded, separately or jointly, by Federal, State or local governments (including assistance provided under the Temporary Assistance for Needy Families (TANF) program, as that term is defined under the implementing regulations issued by the Department of Health and Human Services at 45 CFR 260.31).

Work activities. See definition at section 407(d) of the Social Security Act (42 U.S.C. 607(d)).

[61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000; 65 FR 55161, Sept. 12, 2000; 66 FR 6223, Jan. 19, 2001; 67 FR 47432, July 18, 2002; 81 FR 12370, Mar. 8, 2016]

FAMILY INCOME

§ 5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash

or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) *Welfare assistance payments.* (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifi-

cally designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition and any other required fees and charges, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

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(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in § 5.403;

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8)(i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for

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the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the FEDERAL REGISTER and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

(d) *Annualization of income.* If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject

to a redetermination at the end of the shorter period.

[61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000; 67 FR 47432, July 18, 2002; 70 FR 77743, Dec. 30, 2005; 79 FR 36164, June 25, 2014; 81 FR 12370, Mar. 8, 2016]

§ 5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity, defined in § 5.100 and § 5.603) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions.* In determining adjusted income, the responsible entity must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family; and

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) *Additional deductions.* (1) For public housing, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

(2) For the HUD programs listed in § 5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

[66 FR 6223, Jan. 19, 2001]

§ 5.612 Restrictions on assistance to students enrolled in an institution of higher education.

No assistance shall be provided under section 8 of the 1937 Act to any individual who:

(a) Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);

(b) Is under 24 years of age;

(c) Is not a veteran of the United States military;

(d) Is unmarried;

(e) Does not have a dependent child;

(f) Is not a person with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act and was not receiving assistance under section 8 of the 1937 Act as of November 30, 2005; and

(g) Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under section 8 of the 1937 Act.

[70 FR 77743, Dec. 30, 2005, as amended at 73 FR 49333, Aug. 21, 2008]

§ 5.613 Public housing program and Section 8 tenant-based assistance program: PHA cooperation with welfare agency.

(a) This section applies to the public housing program and the Section 8 tenant-based assistance program.

(b) The PHA must make best efforts to enter into cooperation agreements with welfare agencies under which such agencies agree:

(1) To target public assistance, benefits and services to families receiving assistance in the public housing program and the Section 8 tenant-based assistance program to achieve self-sufficiency;

(2) To provide written verification to the PHA concerning welfare benefits for families applying for or receiving assistance in these housing assistance programs.

[65 FR 16717, Mar. 29, 2000]

§ 5.615 Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) *Applicability.* This section applies to covered families who reside in public